

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

June 3, 1999

DIVISION ONE

B118970 Safari (Not for Publication)
v.
Rolfe et al.

The September 16, 1996 order sustaining in part the demurrer to the second amended complaint, the order denying plaintiff's motion to strike defendants' summary judgment motion, and the judgment entered on January 14, 1998, are affirmed.

Masterson, J.

I concur: Vogel (Miriam A.), J.
I concur: Ortega, Acting P.J. (Opinion)

B126082 Needles (Not for Publication)
v.
Mel Bernie & Company

The judgment is affirmed.

Masterson, J.

We concur: Ortega, Acting P.J.
Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B122571 Honea (Not for Publication)

v.

Bank of America N.T. & S. A.

The judgment and the order awarding costs and attorneys' fees to defendant are affirmed.

Masterson, J.

We concur: Ortega, Acting P.J.
 Vogel (Miriam A.), J.

B125970 Don Koppel Construction, Inc. (Not for Publication)

v.

Binder

The judgment is affirmed. Respondent's motion for sanctions and to dismiss the appeal is denied.

Masterson, J.

We concur: Spencer, P.J.
 Vogel (Miriam A.), J.

DIVISION TWO

B123589 People (Not for Publication)

v.

Nathaniel

The Court:

The judgment is modified to reflect a \$200 parole revocation fine pursuant to Penal Code section 1202.45, this fine to be suspended unless appellant's parole is revoked. The abstract of judgment is to be amended to reflect this fine, as well as the award of 169 days of actual custody credit, 25 days of conduct credit and the total of 194 days of precommitment credit, and the striking of the Penal Code section 667.5, subdivision (b) enhancement. In all other respects, the judgment is affirmed.

Nott, Acting P.J., Zebrowski, J., Mallano, J. (Assigned)

DIVISION TWO (Continued)

B127868 People (Not for Publication)
v.
Lopez et al.

The Court:

As to Lopez, the judgment (order granting probation) is affirmed. As to Miller, the judgment is affirmed.

Boren, P.J., Nott, J., Zebrowski, J.

B129678 Maria P. (Not for Publication)
v.
Superior Court, Los Angeles County
(L.A. County Dept. of Children and Family Services, r.p.i.)

The petition for writ of mandate is denied, and the order to show cause is dismissed.

Zebrowski, J.

We concur: Boren, P.J.
 Mallano, J. (Assigned)

B126006 Torab (Not for Publication)
v.
City of Santa Monica, et al.

The judgment denying appellant's petition for a writ of administrative mandate is affirmed.

Mallano, J. (Assigned)

We concur: Nott, Acting P.J.
 Zebrowski, J.

DIVISION TWO (Continued)

[illegible]

The judgment is modified to impose a parole revocation fine of \$5,000 pursuant to section 1202.45 which shall remain suspended unless and until appellant violates parole. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting that separate \$5,000 restitution fines were imposed pursuant to sections 1202.4 and 1202.45 and to forward the amended abstract to the appropriate correctional authorities. In all other respects, the judgment is affirmed.

Mallano, J. (Assigned)

We concur: Boren, P.J.
Zebrowski, J.

B117581 Stimpfel (Not for Publication)
v.
L.A. County Employees Retirement Association

The order dismissing appellant's complaint is affirmed.

Mallano, J. (Assigned)

We concur: Nott, Acting P.J.
 Zebrowski, J.

B117649 People (Not for Publication)
v.
Smith

The judgment is affirmed.

Mallano, J. (Assigned)

We concur: Nott, Acting P.J.
 Zebrowski, J.

DIVISION TWO (Continued)

B115346 Storage (Not for Publication)
v.
Danson

The judgment entered confirming the arbitration award is affirmed. Respondent is awarded costs on appeal.

Mallano, J. (Assigned)

We concur: Nott, Acting P.J.
 Zebrowski, J.

B116540 Bogle-Lewis (Not for Publication)
v.
Vencor Hospitals California, Inc., et al.

The judgment on appellant's first cause of action for race discrimination, her second cause of action for retaliation for opposing discrimination and harassment (as it relates to Venco only), her third cause of action for retaliation for whistleblowing, and her fourth cause of action for wrongful termination in violation of public policy is reversed, and the cause is remanded to the trial court for further proceedings consistent with the views expressed herein. In all other respects, the judgment is affirmed. Appellant is entitled to recover her costs on appeal.

Mallano, J. (Assigned)

We concur: Boren, P.J.
Zebrowski, J.

B125546 People (Not for Publication)
v.
Hernandez et al.

The Court:

The judgments are affirmed.

Boren, P.J., Nott, J., Mallano, J. (Assigned)

DIVISION TWO (Continued)

[illegible]

The judgment is modified to reflect a \$200 restitution fine pursuant to section 1202.4, subdivision (b) and a \$200 parole revocation fine pursuant to section 1202.45, the latter fine to be suspended unless appellant's parole is revoked. In all other respects, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting that separate \$200 fines were imposed pursuant to sections 1202.4 and 1202.45 and to forward the amended abstract to the appropriate correctional authorities.

Mallano, J. (Assigned)

We concur: Boren, P.J.
 Nott, J.

B130643 Jose L. (Not for Publication)
v.
Superior Court, Los Angeles County
(L.A. County Dept. of Children and Family Services, r.p.i.)

The petition for writ of mandate is denied, and the order to show cause is dismissed.

Mallano, J. (Assigned)

We concur: Boren, P.J.
 Nott, J.

DIVISION FOUR

[illegible]

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.
Hastings, J.

B118946 Wright (Not for Publication)
v.
Vons Companies, Inc.

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.
Curry, J.

DIVISION FIVE

B125076 People (Not for Publication)
v.
Anthony L.

The judgment is reversed.

Grignon, J.

We concur: Turner, P.J.
 Armstrong, J.

DIVISION FIVE (Continued)

B125974 Russell Doutre (Not for Publication)
 v.
 Linda Brooks et al.

The judgment is affirmed. The parties are to bear their own costs on appeal.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B126559 People (Not for Publication)
 v.
 Damien Monrow

The matter is remanded for the juvenile court to exercise its discretion stolen property offense a misdemeanor or a felony. In all other respects, the judgment (order) is affirmed.

Grignon, J.

We concur: Turner, P.J.
 Godoy Perez, J.

B126742 People (Not for Publication)
 v.
 Daniel T.

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B124739 People (Not for Publication)
v.
Pascual P.

The judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B127134 People (Not for Publication)
v.
Jeff R.

The judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B125882 Los Angeles County, D.C.F.S. (Not for Publication)
v.
Maria G.
Erika J.

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B124794 Samuel Mongiello (Not for Publication)
 v.
 A. Fanticola Companies, Inc.

The judgment is affirmed. AFC is to pay Mongiello's costs on appeal.

Grignon, J.

We concur: Turner, P.J.
 Armstrong, J.

B126169 People
 v.
 Guy Finley

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

B126169 People (Not for Publication)
 v.
 Undre Cole

The clerk of the superior court is directed to prepare and deliver to the Department of Corrections an amended abstract of judgment which accurately reflects a total of 231 days, including 76 days of conduct credits. In all other respects, the judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B115078 David Livingston (Certified for Publication)
 v.
 Marie Callenders, Inc.

The order striking plaintiff's strict liability cause of action is reversed. The order of dismissal as to defendants Marie Callenders, Inc., Marie Callenders Ventures, Inc., Marie Callenders Wholesalers, Inc. Association of Marie Callender Franchisees, Inc., and Bay Ventures, Inc. is reversed. The finding Marie Callenders #24 was not negligent is affirmed. The matter is remanded for a limited retrial on the issue of whether any defendant is liable for failure to warn of an ingredient to which a substantial number of the population are allergic within the meaning of comment j to section 402A of the Restatement Second of Torts. Plaintiff, David Livingston, is to recover his costs on appeal jointly and severally from all defendants.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B126308 Los Angeles County, D.C.F.S. (Not for Publication)
 v.
 Christina G.

The judgment is affirmed.

Godoy Perez, J.

We concur: Turner, P.J.
 Armstrong, J.

B121978 George Wesley Wiegand Jr. (Not for Publication)
 v.
 Judith F. Wiegand

The judgment is affirmed. Respondent to recover costs on appeal.

Armstrong, J.

We concur: Turner, P.J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B122902 People (Not for Publication)
v.
Nazario Chavez

The judgment is modified to impose a parole revocation fine of \$1,000, suspended, pursuant to section 1202.45. The judgment is affirmed in all other respects. The clerk of the superior court is directed to prepare an amended abstract of judgment showing the additional suspended \$1,000 parole revocation fine imposed pursuant to section 1202.45 and the \$1,000 restitution fine imposed by the trial court pursuant to section 1202.4. The superior court clerk is then directed to deliver the corrected abstract of judgment to the Department of Corrections.

Armstrong, J.

We concur: Grignon, Acting P.J.
Godoy Perez, J.

B124823 People (Not for Publication)
v.
Charles Fuller

The judgment is reversed.

Turner, P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

6-3-99

104953-99

The HONORABLE WILLIAM R. WEISMAN, Judge of the Los Angeles Municipal Court, Los Angeles County, is hereby assigned to assist the Court of Appeal, Second Appellate District, Division Five, as a Justice thereof, on the following dates:

June 1, 1999 to August 31, 1999

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: May 28, 1999

Ronald M. George
Chief Justice of California and
Chairperson of the Judicial Council

DIVISION SEVEN

Court convened at 9:00 A.M.

Present: Lillie, P.J., Johnson, J., Woods, J., Neal, J., Hay, J. (Assigned), and Emma Jean Amos, Deputy Clerk.

Each of the following:

B111676 People v. Lucas
B115212 People v. Tallmadge
B117205 People v. Granados
B120201 People v. Vidales & Vidales
B120295 People v. Moreno
B120311 People v. Valencia
B121176 People v. Scott

DIVISION SEVEN (Continued)

Each of the following (cont.):

B122000 People v. Montano
B122012 People v. Stenhouse
B122467 People v. Johnson
B122752 People v. Luzano
B122803 People v. Gonzalez
B123025 People v. Terry
B123052 People v. Baskin
B123135 People v. Gil
B121340 People v. Hardiman
B123979 People v. Lasonya G.
B124241 People v. Harris
B124302 People v. Prothro
B124750 People v. Angelica P.
B125338 People v. McLoughlin
B126453 People v. Arzuaga
B126475 People v. Adderly
B128495 People v. Wise
B130002 Jeanette M. v. S.C.L.A.
B130264 Todd E. v. S.C.L.A.
B120079 County Of Los Angeles v. Juanita B.
B123756 Honore v. Csallo
B125848 County Of Los Angeles v. Patricia W.
B118729 People v. Mendoza
B123489 County Of Los Angeles v. Naeemah B.

Argument waived, cause submitted.

B120892 People
 v.
 Troupe and Hamilton

Merits:

Argued by David Bernstein for appellant and by Jennevee H. De Guzman, deputy attorney general, for respondent and Mary Holbrook for appellant waived oral argument. Cause submitted.

DIVISION SEVEN (Continued)

B117443 People
 v.
 Lomardelli

Merits:

Argued by Susanne C. Wylie for appellant and by Mitchell Keiter, deputy attorney general, for respondent. Cause submitted.

B123254 People
 v.
 Lawrence I.

Merits:

Argued by Leonard J. Klaif for appellant and by John Yang, deputy attorney general, for respondent. Cause submitted.

B126282 Pantoja
 v.
 Marcus & Milichap

Merits:

Argued by Donald Baum for appellant and by Steven J. Shapero for respondent Taylor. Francis E. Quinlan for respondent Pantoja waived oral argument. Cause submitted.

B116910 People
 v.
 Berumen

Merits:

Argued by Kyle M. Wesendorf for appellant and by Juliet H. Swoboda, deputy attorney general, for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B109825 Daly
 v.
 L.A. Housing Authority

Merits:
Argued by Nedra Austin for appellant and Errol Daly respondent in propria
persona. Cause submitted.

B118092 Sarihan
 v.
 Great Western Bank

Merits:
Argued by Ronald S. Parson for appellant and by Timothy A. Lambirth for
respondent. Cause submitted.

B118956 Peterson
 v.
 McDonald

Merits:
Argued by Steven Rice for appellant and by John Clark Brown for
respondent. Cause submitted.

B123665 Wolf
 v.
 Robi

Merits:
Argued by Terran T. Steinhart for appellant and no appearance by counsel
for respondent. Cause submitted.

B126075 Trans-Action Companies
 v.
 Building Analytics

Merits:
Argued by R. Donald McIntyre for appellant and by Robert Stellwagen for
respondent. Cause submitted.

DIVISION SEVEN (Continued)

B116306 Burns
v.
Baldwin

Merits:

Argued by Joanne M. Frasca for appellant and respondent Robert Burns in propria persona. Cause submitted.

Court recessed at 11:55 A.M.

The Court reconvened at 2:00 P.M.

Present: Lillie, P.J., Johnson, J., Woods, J., Neal, J., Hay, J. (Assigned), and Emma Jean Amos, Deputy Clerk.

B122165 Marino
v.
Kenoff & Machtinger

Merits:

Argued by Terrance R. McKnight for appellant and by Bruce Isaacs for respondent. Cause submitted.

B127234 Ballardine
v.
Apple One Employment

Merits:

Argued by Charles Aghoian for appellant and by Toni Jaramilla for respondent. Cause submitted.

B118295 Real Estate Commissioner
v.
Lund
Grant

Merits:

Argued by Diane Spencer Shaw, deputy attorney general, for appellant and by Christina Arndt and Thomasina M. Reed for respondents. Cause submitted.

DIVISION SEVEN (Continued)

B115302 Filippo Industries
v.
Sun Insurance Company

Argument continued to July 1, 1999, at 2:00 p.m.

B110929 People
v.
Gonzalez and Montes

Matter ordered off calendar.

Court adjourned at 3:42 p.m.

B124026 People (Not for Publication)
v.
Martinez

The judgment is affirmed.

Woods, J.

We concur: Johnson, Acting P.J.
Neal, J.

B128582 Alva (Not for Publication)
v.
Workers Compensation Appeals Board
Marriott Int'l., Respondent

The opinion and decision after reconsideration is annulled and the matter is remanded for further proceedings consistent with this opinion.

Woods, J.

We concur: Lillie, P.J.
 Neal, J.

DIVISION SEVEN (Continued)

B113462 G.B. Data Systems (Not for Publication)
 v.
 Madison/Graham Colorgraphics, Inc.

The judgment is reversed and remanded. Appellants are entitled to costs incurred in connection with the appeal.

Woods, J.

We concur: Lillie, P.J.
 Neal, J.

B117053 Deleon-Jones (Not for Publication)
 v.
 Health Net

The order is affirmed. Respondents are entitled to costs incurred in connection with this appeal.

Woods, J.

We concur: Lillie, P.J.
 Neal, J.

B115762 People (Not for Publication)
 v.
 Marjanian

The judgment is affirmed.

Woods, J.

I concur: Lillie, P.J.
I dissent: Johnson, J.(Opinion)

DIVISION SEVEN (Continued)

B126534 People v. Smith (Not for Publication)

The judgment is affirmed.

Woods, J.

We concur: Lillie, P.J.
Neal, J.

B122214 People (Not for Publication)
v.
Torres

The finding of the truth of the prior conviction is reversed and the cause is remanded for a new trial as to the truth of the prior conviction qualifying appellant for sentencing under the Three Strikes law. The orders of sentencing are also reversed and appellant shall be resentenced following the new trial on his prior conviction. In all other respects, the judgment is affirmed.

Woods, J.

We concur: Lillie, P.J.
 Johnson, J.

B120732 People v. Jocsing (Not for Publication)

The judgment is affirmed.

Woods, J.

We concur: Johnson, Acting P.J.
 Neal, J.

DIVISION SEVEN (Continued)

B123423 People (Not for Publication)
v.
Herrera

The judgment is modified to impose a \$1,800 restitution fine under Penal Code section 1202.45. As modified, the judgment is affirmed. The superior court shall cause its clerk to send an amended abstract of judgment to the California Department of Corrections which states the imposition of the restitution fines imposed under Penal Code sections 1202.4 and 1202.45.

Woods, J.

We concur: Lillie, P.J.
Neal, J.